



February 22, 2002

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## ENGROSSED HOUSE BILL No. 1202

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DIGEST OF HB 1202 (Updated February 21, 2002 9:12 AM - DI 105)

**Citations Affected:** IC 5-2; IC 20-5; IC 20-6.1; IC 34-13; IC 34-30; IC 35-42.

**Synopsis:** School students and employees. Enables school corporations to obtain limited and national criminal history checks for all employees rather than only for new employees. Makes conforming changes in the policies that schools may adopt concerning criminal history checks. Requires a prosecuting attorney to notify the state superintendent of public instruction and the employer when a licensed school employee is convicted of certain offenses. Makes changes in the grounds for which teachers' licenses may be revoked and contracts may be canceled. Requires a governmental entity to pay a judgment of a claim or suit against an employee when the act or omission causing the loss is within the scope of the employee's employment. Requires a governmental entity to pay a compromise or settlement against an employee when: (1) the act or omission causing the loss is within the scope of the employee's employment; and (2) the compromise or settlement is in the best interest of the governmental entity. Provides that a governmental entity or employee acting in the scope of employment is not liable if a loss results from an injury to a person assigned to a pretrial conditional release program. Provides civil immunity for making certain reports concerning a teacher. Changes the law concerning seduction of a child at least 16 years of age to add behaviors that constitute the offense and to expand coverage to all employees of a child's school.

**Effective:** July 1, 2002.

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**Robertson, Torr, Dvorak, Scholer,  
Goodin, Porter, Behning**

(SENATE SPONSORS — BRAY, SIPES, CLARK)

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January 10, 2002, read first time and referred to Committee on Education.  
January 31, 2002, amended, reported — Do Pass.  
February 4, 2002, read second time, amended, ordered engrossed.  
February 5, 2002, engrossed. Read third time, passed. Yeas 96, nays 0.

SENATE ACTION

February 11, 2002, read first time and referred to Committee on Judiciary.  
February 21, 2002, amended, reported favorably — Do Pass.

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EH 1202—LS 6997/DI 22+



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February 22, 2002

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

## ENGROSSED HOUSE BILL No. 1202

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A BILL FOR AN ACT to amend the Indiana Code concerning education.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 5-2-5-5, AS AMENDED BY P.L.272-2001,  
2 SECTION 2, AND AS AMENDED BY P.L.228-2001, SECTION 2, IS  
3 AMENDED AND CORRECTED TO READ AS FOLLOWS  
4 [EFFECTIVE JULY 1, 2002]: Sec. 5. (a) Except as provided in  
5 subsection (b), on request, law enforcement agencies shall release or  
6 allow inspection of a limited criminal history to noncriminal justice  
7 organizations or individuals only if the subject of the request:  
8 (1) has applied for employment with a noncriminal justice  
9 organization or individual;  
10 (2) has applied for a license and criminal history data as required  
11 by law to be provided in connection with the license;  
12 (3) is a candidate for public office or a public official;  
13 (4) is in the process of being apprehended by a law enforcement  
14 agency;  
15 (5) is placed under arrest for the alleged commission of a crime;  
16 (6) has charged that his rights have been abused repeatedly by  
17 criminal justice agencies;

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(7) is the subject of judicial decision or determination with respect to the setting of bond, plea bargaining, sentencing, or probation;

(8) has volunteered services that involve contact with, care of, or supervision over a child who is being placed, matched, or monitored by a social services agency or a nonprofit corporation;

**(9) is employed by an entity that seeks to enter into a contract with a public school (as defined in IC 20-10.1-1-2) or a non-public school (as defined in IC 20-10.1-1-3), if the subject of the request is expected to have direct, ongoing contact with school children within the scope of the subject's employment;**

**(10) has volunteered services at a public school (as defined in IC 20-10.1-1-2) or non-public school (as defined in IC 20-10.1-1-3) that involve contact with, care of, or supervision over a student enrolled in the school;**

~~(10)~~ **(11)** is being investigated for welfare fraud by an investigator of the division of family and children or a county office of family and children;

~~(11)~~ **(12)** is being sought by the parent locator service of the child support bureau of the division of family and children; or

~~(12)~~ **(13)** has been convicted of any of the following:

(A) Rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age.

(B) Criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age.

(C) Child molesting (IC 35-42-4-3).

(D) Child exploitation (IC 35-42-4-4(b)).

(E) Possession of child pornography (IC 35-42-4-4(c)).

(F) Vicarious sexual gratification (IC 35-42-4-5).

(G) Child solicitation (IC 35-42-4-6).

(H) Child seduction (IC 35-42-4-7).

(I) *Sexual misconduct with a minor as a Class A or Class B felony (IC 35-42-4-9).*

(J) Incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age.

However, limited criminal history information obtained from the National Crime Information Center may not be released under this section except to the extent permitted by the Attorney General of the United States.

(b) A law enforcement agency shall allow inspection of a limited criminal history by and release a limited criminal history to the following noncriminal justice organizations:



(1) Federally chartered or insured banking institutions.

(2) Officials of state and local government for *any of the purpose*  
*of following purposes:*

(A) Employment ~~and~~ with a state or local governmental  
entity.

(B) Licensing.

(3) Segments of the securities industry identified under 15 U.S.C.  
78q(f)(2).

(c) Any person who uses limited criminal history for any purpose  
not specified under this section commits a Class A misdemeanor.

SECTION 2. IC 20-5-2-7, AS AMENDED BY P.L.272-2001,  
SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
JULY 1, 2002]: Sec. 7. (a) A school corporation, including a school  
township, shall adopt a policy concerning criminal history information  
for individuals who:

(1) apply for:

(A) employment with the school corporation; or

(B) employment with an entity with which the school  
corporation contracts for services;

(2) seek to enter into a contract to provide services to the school  
corporation; or

(3) are employed by an entity that seeks to enter into a contract to  
provide services to the school corporation;

if the individuals are likely to have direct, ongoing contact with  
children within the scope of the individuals' employment.

(b) A school corporation, including a school township, shall  
administer a policy adopted under this section uniformly for all  
individuals to whom the policy applies. A policy adopted under this  
section may require any of the following:

(1) The school corporation, including a school township, may  
request limited criminal history information concerning each  
applicant for noncertificated employment or certificated  
employment from a local or state law enforcement agency before  
or not later than three (3) months after the applicant's employment  
by the school corporation.

(2) Each individual hired for noncertificated employment or  
certificated employment may be required to provide a written  
consent for the school corporation to request under IC 5-2-5  
limited criminal history information or a national criminal history  
background check concerning the individual before or not later  
than three (3) months after the individual's employment by the  
school corporation. The school corporation may require the

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individual to provide a set of fingerprints and pay any fees required for a national criminal history background check.

(3) Each individual hired for noncertificated employment may be required at the time the individual is hired to submit a certified copy of the individual's limited criminal history (as defined in IC 5-2-5-1(1)) to the school corporation.

(4) Each individual hired for noncertificated employment may be required at the time the individual is hired to:

(A) submit a request to the Indiana central repository for limited criminal history information under IC 5-2-5;

(B) obtain a copy of the individual's limited criminal history; and

(C) submit to the school corporation the individual's limited criminal history and a document verifying a disposition (as defined in IC 5-2-5-1(6)) that does not appear on the limited criminal history.

(5) Each applicant for noncertificated employment or certificated employment may be required at the time the individual applies to answer questions concerning the individual's limited criminal history. The failure to answer honestly questions asked under this subdivision is grounds for termination of the employee's employment.

(6) Each individual that:

(A) seeks to enter into a contract to provide services to a school corporation; or

(B) is employed by an entity that seeks to enter into a contract with a school corporation;

may be required at the time the contract is formed to comply with the procedures described in ~~subdivision (4)(A) and (4)(B)~~. ~~The school corporation either may require that the individual or the contractor comply with the procedures described in subdivision (4)(C) or (5): subdivisions (2), (4), and (5).~~ **An individual who is employed by an entity that seeks to enter into a contract with a school corporation may be required to provide the consent described in subdivision (2) or the information described in subdivisions (4) and (5) to either the individual's employer or the school corporation.** Failure to comply with subdivisions (2), (4), and (5), as required by the school corporation, is grounds for termination of the contract.

(c) If an individual is required to obtain a limited criminal history under this section, the individual is responsible for all costs associated with obtaining the limited criminal history.

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(d) Information obtained under this section must be used in accordance with IC 5-2-5-6.

SECTION 3. IC 20-6.1-3-7, AS AMENDED BY P.L.37-2000, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 7. (a) On the written recommendation of the state superintendent, the board may **suspend or** revoke a license for:

- (1) immorality;
- (2) misconduct in office;
- (3) incompetency; or
- (4) willful neglect of duty.

However, for each **suspension or** revocation the board shall comply with IC 4-21.5-3.

(b) **This subsection applies when a prosecuting attorney knows that a licensed employee of a public school (as defined in IC 20-10.1-1-2) or an accredited nonpublic school has been convicted of an offense listed in subsection (d). The prosecuting attorney shall immediately give written notice of the conviction to the following:**

- (1) **The state superintendent.**
- (2) **Except as provided in subdivision (3), the superintendent of the school corporation that employs the licensed employee or the equivalent authority for an accredited nonpublic school.**
- (3) **The presiding officer of the governing body of the school corporation that employs the licensed employee, if the convicted licensed employee is the superintendent of the school corporation.**

(c) **The superintendent of a school corporation, presiding officer of the governing body, or equivalent authority for an accredited nonpublic school shall immediately notify the state superintendent when the person knows that a current or former licensed employee of the public school corporation or accredited nonpublic school has been convicted of an offense listed in subsection (c): (d).**

~~(c)~~ (d) The board, after holding a hearing on the matter, shall permanently revoke the license of a person who is known by the board to have been convicted of any of the following offenses:

- (1) **Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age.**
- (2) **Criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18) years of age.**
- (3) **Rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age.**



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~~(2)~~ **(4)** Criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age.

~~(3)~~ **(5)** Child molesting (IC 35-42-4-3).

~~(4)~~ **(6)** Child exploitation (IC 35-42-4-4(b)).

~~(5)~~ **(7)** Vicarious sexual gratification (IC 35-42-4-5).

~~(6)~~ **(8)** Child solicitation (IC 35-42-4-6).

~~(7)~~ **(9)** Child seduction (IC 35-42-4-7).

~~(8)~~ **(10)** Sexual misconduct with a minor (IC 35-42-4-9).

~~(9)~~ **(11)** Incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age.

**(12) Dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1).**

**(13) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).**

**(14) Dealing in a schedule IV controlled substance (IC 35-48-4-3).**

**(15) Dealing in a schedule V controlled substance (IC 35-48-4-4).**

**(16) Dealing in a counterfeit substance (IC 35-48-4-5).**

**(17) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).**

~~(d)~~ **(e)** A license may be suspended by the state superintendent as specified in IC 20-6.1-4-13.

SECTION 4. IC 20-6.1-4-10, AS AMENDED BY P.L.228-2001, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 10. (a) An indefinite contract with a permanent teacher may be canceled in the manner specified in section 11 of this chapter ~~for only~~ **for one (1) or more of** the following grounds:

(1) Immorality.

(2) Insubordination, which means a willful refusal to obey the state school laws or reasonable rules prescribed for the government of the school corporation.

(3) Neglect of duty.

(4) Incompetency.

(5) Justifiable decrease in the number of teaching positions.

(6) A conviction for

~~(A) rape (IC 35-42-4-1); if the victim is less than eighteen (18) years of age;~~

~~(B) criminal deviate conduct (IC 35-42-4-2); if the victim is less than eighteen (18) years of age;~~

~~(C) child molesting (IC 35-42-4-3);~~

~~(D) child exploitation (IC 35-42-4-4(b));~~



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(E) vicarious sexual gratification (IC 35-42-4-5);  
 (F) child solicitation (IC 35-42-4-6);  
 (G) child seduction (IC 35-42-4-7);  
 (H) sexual misconduct with a minor as a Class A or B felony  
 (IC 35-42-4-9); or  
 (I) incest (IC 35-46-1-3), if the victim is less than eighteen  
 (18) years of age; or

**an offense listed in IC 20-6.1-3-7(d).**

(7) Other good and just cause.

When the cause of cancellation is ground (1), (2), or (6), the cancellation is effective immediately. When the cause of cancellation is ground (3), (4), (5), or (7), the cancellation is effective at the end of the school term following the cancellation.

(b) An indefinite contract may not be canceled for political or personal reasons.

SECTION 5. IC 20-6.1-4-10.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 10.5. (a) An indefinite contract with a semipermanent teacher may be canceled in the manner specified in section 11 of this chapter only for **one (1) or more of** the following grounds:

- (1) Immorality.
- (2) Insubordination, which means a willful refusal to obey the state school laws or reasonable rules prescribed for the government of the school corporation.
- (3) Neglect of duty.
- (4) Substantial inability to perform teaching duties.
- (5) Justifiable decrease in the number of teaching positions.
- (6) Good and just cause.
- (7) The cancellation is in the best interest of the school corporation.
- (8) A conviction for
  - (A) rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age;
  - (B) criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age;
  - (C) child molesting (IC 35-42-4-3);
  - (D) child exploitation (IC 35-42-4-4(b));
  - (E) vicarious sexual gratification (IC 35-42-4-5);
  - (F) child solicitation (IC 35-42-4-6);
  - (G) child seduction (IC 35-42-4-7); or
  - (H) incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age.





an offense listed in IC 20-6.1-3-7(d).

(b) An indefinite contract with a semipermanent teacher may not be canceled for political or personal reasons.

(c) Before the cancellation of a semipermanent teacher's indefinite contract, the principal of the school at which the teacher teaches shall provide the teacher with a written evaluation of the teacher's performance before January 1 of each year. Upon the request of a semipermanent teacher, delivered in writing to the principal within thirty (30) days after the teacher receives the evaluation required by this section, the principal shall provide the teacher with an additional written evaluation.

SECTION 6. IC 34-13-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. (a) A judgment rendered with respect to or a settlement made by a governmental entity bars an action by the claimant against an employee whose conduct gave rise to the claim resulting in that judgment or settlement.

(b) The governmental entity shall pay any judgment, compromise, or settlement of a claim or suit against an employee when:

(1) the act or omission causing the loss is within the scope of the employee's employment; and

(2) the:

(A) governor, in the case of a claim or suit against a state employee; or

(B) the governing body of the political subdivision, in the case of a claim or suit against an employee of a political subdivision;

determines that paying the judgment, compromise or settlement is in the best interest of the governmental entity.

(c) The governmental entity shall pay all costs and fees incurred by or on behalf of an employee in defense of a claim or suit for a loss occurring because of acts or omissions within the scope of the employee's employment, regardless of whether the employee can or cannot be held personally liable for the loss.

(d) This chapter shall not be construed as:

(1) a waiver of the eleventh amendment to the Constitution of the United States;

(2) consent by the state of Indiana or its employees to be sued in any federal court; or

(3) consent to be sued in any state court beyond the boundaries of Indiana.

SECTION 7. IC 34-13-3-3, AS AMENDED BY P.L.250-2001, SECTION 6, AND AS AMENDED BY P.L.280-2001, SECTION 42,



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1 IS AMENDED AND CORRECTED TO READ AS FOLLOWS  
 2 [EFFECTIVE JULY 1, 2002]: Sec. 3. A governmental entity or an  
 3 employee acting within the scope of the employee's employment is not  
 4 liable if a loss results from *the following*:

- 5 (1) The natural condition of unimproved property.  
 6 (2) The condition of a reservoir, dam, canal, conduit, drain, or  
 7 similar structure when used by a person for a purpose that is not  
 8 foreseeable.  
 9 (3) The temporary condition of a public thoroughfare *or extreme*  
 10 *sport area* that results from weather.  
 11 (4) The condition of an unpaved road, trail, or footpath, the  
 12 purpose of which is to provide access to a recreation or scenic  
 13 area.  
 14 (5) *The design, construction, control, operation, or normal*  
 15 *condition of an extreme sport area, if all entrances to the extreme*  
 16 *sport area are marked with:*

- 17 (A) *a set of rules governing the use of the extreme sport area;*  
 18 (B) *a warning concerning the hazards and dangers associated*  
 19 *with the use of the extreme sport area; and*  
 20 (C) *a statement that the extreme sport area may be used only*  
 21 *by persons operating extreme sport equipment.*

22 *This subdivision shall not be construed to relieve a governmental*  
 23 *entity from liability for the continuing duty to maintain extreme*  
 24 *sports areas in a reasonably safe condition.*

- 25 (6) The initiation of a judicial or an administrative proceeding.  
 26 ~~(6)~~ (7) The performance of a discretionary function; however, the  
 27 provision of medical or optical care as provided in IC 34-6-2-38  
 28 shall be considered as a ministerial act.  
 29 ~~(7)~~ (8) The adoption and enforcement of or failure to adopt or  
 30 enforce a law (including rules and regulations), unless the act of  
 31 enforcement constitutes false arrest or false imprisonment.  
 32 ~~(8)~~ (9) An act or omission performed in good faith and without  
 33 malice under the apparent authority of a statute which is invalid  
 34 if the employee would not have been liable had the statute been  
 35 valid.  
 36 ~~(9)~~ (10) The act or omission of anyone other than the  
 37 governmental entity or the governmental entity's employee.  
 38 ~~(10)~~ (11) The issuance, denial, suspension, or revocation of, or  
 39 failure or refusal to issue, deny, suspend, or revoke, any permit,  
 40 license, certificate, approval, order, or similar authorization,  
 41 where the authority is discretionary under the law.  
 42 ~~(11)~~ (12) Failure to make an inspection, or making an inadequate



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or negligent inspection, of any property, other than the property of a governmental entity, to determine whether the property complied with or violates any law or contains a hazard to health or safety.

~~(12)~~ (13) Entry upon any property where the entry is expressly or impliedly authorized by law.

~~(13)~~ (14) Misrepresentation if unintentional.

~~(14)~~ (15) Theft by another person of money in the employee's official custody, unless the loss was sustained because of the employee's own negligent or wrongful act or omission.

~~(15)~~ (16) Injury to the property of a person under the jurisdiction and control of the department of correction if the person has not exhausted the administrative remedies and procedures provided by section 7 of this chapter.

~~(16)~~ (17) Injury to the person or property of a person under supervision of a governmental entity and who is:

(A) on probation; or

(B) assigned to an alcohol and drug services program under IC 12-23, a minimum security release program under IC 11-10-8, **a pretrial conditional release program under IC 35-33-8**, or a community corrections program under IC 11-12.

~~(17)~~ (18) Design of a highway (as defined in IC 9-13-2-73) if the claimed loss occurs at least twenty (20) years after the public highway was designed or substantially redesigned; except that this subdivision shall not be construed to relieve a responsible governmental entity from the continuing duty to provide and maintain public highways in a reasonably safe condition.

~~(18)~~ (19) Development, adoption, implementation, operation, maintenance, or use of an enhanced emergency communication system.

~~(19)~~ (20) Injury to a student or a student's property by an employee of a school corporation if the employee is acting reasonably under a discipline policy adopted under IC 20-8.1-5.1-7(b). ~~or~~

~~(20)~~ (21) An error resulting from or caused by a failure to recognize the year 1999, 2000, or a subsequent year, including an incorrect date or incorrect mechanical or electronic interpretation of a date, that is produced, calculated, or generated by:

(A) a computer;

(B) an information system; or

(C) equipment using microchips;



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that is owned or operated by a governmental entity. However, this subdivision does not apply to acts or omissions amounting to gross negligence, willful or wanton misconduct, or intentional misconduct. For purposes of this subdivision, evidence of gross negligence may be established by a party by showing failure of a governmental entity to undertake an effort to review, analyze, remediate, and test its electronic information systems or by showing failure of a governmental entity to abate, upon notice, an electronic information system error that caused damage or loss. However, *this* subdivision ~~(20)~~ expires ~~on~~ June 30, 2003. ~~or~~ ~~(21)~~ **(22)** *An act or omission performed in good faith under the apparent authority of a court order described in IC 35-46-1-15.1 that is invalid, including an arrest or imprisonment related to the enforcement of the court order, if the governmental entity or employee would not have been liable had the court order been valid.*

SECTION 8. IC 34-13-3-5, AS AMENDED BY P.L.192-2001, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 5. (a) Civil actions relating to acts taken by a board, a committee, a commission, an authority, or another instrumentality of a governmental entity may be brought only against the board, the committee, the commission, the authority, or the other instrumentality of a governmental entity. A member of a board, a committee, a commission, an authority, or another instrumentality of a governmental entity may not be named as a party in a civil suit that concerns the acts taken by a board, a committee, a commission, an authority, or another instrumentality of a governmental entity where the member was acting within the scope of the member's employment. For the purposes of this subsection, a member of a board, a committee, a commission, an authority, or another instrumentality of a governmental entity is acting within the scope of the member's employment when the member acts as a member of the board, committee, commission, authority, or other instrumentality.

(b) A judgment rendered with respect to or a settlement made by a governmental entity bars an action by the claimant against an employee, including a member of a board, a committee, a commission, an authority, or another instrumentality of a governmental entity, whose conduct gave rise to the claim resulting in that judgment or settlement. A lawsuit alleging that an employee acted within the scope of the employee's employment ~~must be exclusive to the complaint and~~ bars an action by the claimant against the employee personally. However, if the governmental entity answers that the employee acted outside the scope

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of the employee's employment, the plaintiff may amend the complaint and sue the employee personally. An amendment to the complaint by the plaintiff under this subsection must be filed not later than one hundred eighty (180) days from the date the answer was filed and may be filed notwithstanding the fact that the statute of limitations has run.

(c) A lawsuit filed against an employee personally must allege that an act or omission of the employee that causes a loss is:

- (1) criminal;
- (2) clearly outside the scope of the employee's employment;
- (3) malicious;
- (4) willful and wanton; or
- (5) calculated to benefit the employee personally.

The complaint must contain a reasonable factual basis supporting the allegations.

(d) Subject to the provisions of sections 4, 14, 15, and 16 of this chapter, the governmental entity shall pay any judgment, compromise, or settlement of a claim or suit against an employee when;

- (1) the act or omission causing the loss is within the scope of the employee's employment, regardless of whether the employee can or cannot be held personally liable for the loss; and
- (2) the:

(A) governor in the case of a claim or suit against a state employee; or

(B) governing body of the political subdivision, in the case of a claim or suit against an employee of a political subdivision; determines that paying the judgment, compromise or settlement is in the best interest of the governmental entity.

(e) The governmental entity shall provide counsel for and pay all costs and fees incurred by or on behalf of an employee in defense of a claim or suit for a loss occurring because of acts or omissions within the scope of the employee's employment, regardless of whether the employee can or cannot be held personally liable for the loss.

(f) This chapter shall not be construed as:

- (1) a waiver of the eleventh amendment to the Constitution of the United States;
- (2) consent by the state of Indiana or its employees to be sued in any federal court; or
- (3) consent to be sued in any state court beyond the boundaries of Indiana.

SECTION 9. IC 34-13-4-1, AS AMENDED BY P.L.192-2001, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. If a present or former public employee,

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including a member of a board, a committee, a commission, an authority, or another instrumentality of a governmental entity, is or could be subject to personal civil liability for a loss occurring because of a noncriminal act or omission within the scope of the public employee's employment which violates the civil rights laws of the United States, the governmental entity shall, subject to IC 34-13-3-4, IC 34-13-3-14, IC 34-13-3-15, and IC 34-13-3-16, pay any judgment, compromise, or settlement of the claim or suit when:

(1) the governor, in the case of a claim or suit against a state employee; or

(2) the governing body of the political subdivision, in the case of a claim or suit against an employee of a political subdivision; determines that paying the judgment, compromise or settlement is in the best interest of the governmental entity. The governmental entity shall also pay all costs and fees incurred by or on behalf of a public employee in defense of the claim or suit.

SECTION 10. IC 34-30-2-84.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 84.5. IC 20-6.1-3-7 (Concerning a person who makes a report concerning a teacher).**

SECTION 11. IC 35-42-4-7, AS AMENDED BY P.L.228-2001, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 7. (a) As used in this section, "adoptive parent" has the meaning set forth in IC 31-9-2-6.

(b) As used in this section, "adoptive grandparent" means the parent of an adoptive parent.

(c) As used in this section, "child care worker" means a person who:

(1) provides care, supervision, or instruction to a child within the scope of the person's employment in a ~~public or private school or~~ shelter care facility; or

(2) is employed by a:

(A) school corporation; or

(B) nonpublic school;

attended by a child who is the victim of a crime under this chapter.

(d) As used in this section, "custodian" means any person who resides with a child and is responsible for the child's welfare.

(e) As used in this section, "nonpublic school" has the meaning set forth in IC 20-10.1-1-3.

(f) As used in this section, "school corporation" has the meaning set forth in IC 20-10.1-1-1.

(g) As used in this section, "stepparent" means an individual who is

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1 married to a child's custodial or noncustodial parent and is not the  
 2 child's adoptive parent.

3 ~~(f)~~ **(h)** If a person who is:

4 (1) at least eighteen (18) years of age; and

5 (2) the:

6 (A) guardian, adoptive parent, adoptive grandparent,  
 7 custodian, or stepparent of; or

8 (B) child care worker for;

9 a child at least sixteen (16) years of age but less than eighteen  
 10 (18) years of age;

11 engages **with the child** in sexual intercourse, ~~or~~ deviate sexual conduct  
 12 (as defined in IC 35-41-1-9), ~~with the child;~~ **or any fondling or**  
 13 **touching with the intent to arouse or satisfy the sexual desires of**  
 14 **either the child or the adult,** the person commits child seduction, a  
 15 Class D felony.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Education, to which was referred House Bill 1202, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 5-2-5-5, AS AMENDED BY P.L.272-2001, SECTION 2, AND AS AMENDED BY P.L.228-2001, SECTION 2, IS AMENDED AND CORRECTED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 5. (a) Except as provided in subsection (b), on request, law enforcement agencies shall release or allow inspection of a limited criminal history to noncriminal justice organizations or individuals only if the subject of the request:

- (1) has applied for employment with a noncriminal justice organization or individual;
- (2) has applied for a license and criminal history data as required by law to be provided in connection with the license;
- (3) is a candidate for public office or a public official;
- (4) is in the process of being apprehended by a law enforcement agency;
- (5) is placed under arrest for the alleged commission of a crime;
- (6) has charged that his rights have been abused repeatedly by criminal justice agencies;
- (7) is the subject of judicial decision or determination with respect to the setting of bond, plea bargaining, sentencing, or probation;
- (8) has volunteered services that involve contact with, care of, or supervision over a child who is being placed, matched, or monitored by a social services agency or a nonprofit corporation;
- (9) is employed by an entity that seeks to enter into a contract with a public school (as defined in IC 20-10.1-1-2) or a non-public school (as defined in IC 20-10.1-1-3), if the subject of the request is expected to have direct, ongoing contact with school children within the scope of the subject's employment;**
- (10) has volunteered services at a public school (as defined in IC 20-10.1-1-2) or non-public school (as defined in IC 20-10.1-1-3) that involve contact with, care of, or supervision over a student enrolled in the school;**
- ~~(10)~~ **(11) is being investigated for welfare fraud by an investigator of the division of family and children or a county office of family and children;**

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~~(H)~~ (12) is being sought by the parent locator service of the child support bureau of the division of family and children; or

~~(I2)~~ (13) has been convicted of any of the following:

- (A) Rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age.
- (B) Criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age.
- (C) Child molesting (IC 35-42-4-3).
- (D) Child exploitation (IC 35-42-4-4(b)).
- (E) Possession of child pornography (IC 35-42-4-4(c)).
- (F) Vicarious sexual gratification (IC 35-42-4-5).
- (G) Child solicitation (IC 35-42-4-6).
- (H) Child seduction (IC 35-42-4-7).
- (I) *Sexual misconduct with a minor as a Class A or B felony (IC 35-42-4-9).*
- (J) Incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age.

However, limited criminal history information obtained from the National Crime Information Center may not be released under this section except to the extent permitted by the Attorney General of the United States.

(b) A law enforcement agency shall allow inspection of a limited criminal history by and release a limited criminal history to the following noncriminal justice organizations:

- (1) Federally chartered or insured banking institutions.
- (2) Officials of state and local government for *any of the purpose of following purposes*:
  - (A) Employment ~~and~~ with a state or local governmental entity.
  - (B) Licensing.
- (3) Segments of the securities industry identified under 15 U.S.C. 78q(f)(2).

(c) Any person who uses limited criminal history for any purpose not specified under this section commits a Class A misdemeanor.

SECTION 2. IC 20-5-2-7, AS AMENDED BY P.L.272-2001, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 7. (a) A school corporation, including a school township, shall adopt a policy concerning criminal history information for individuals who:

- (1) apply for:
  - (A) employment with the school corporation; or
  - (B) employment with an entity with which the school



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corporation contracts for services;

(2) seek to enter into a contract to provide services to the school corporation; or

(3) are employed by an entity that seeks to enter into a contract to provide services to the school corporation;

if the individuals are likely to have direct, ongoing contact with children within the scope of the individuals' employment.

(b) A school corporation, including a school township, shall administer a policy adopted under this section uniformly for all individuals to whom the policy applies. A policy adopted under this section may require any of the following:

(1) The school corporation, including a school township, may request limited criminal history information concerning each applicant for noncertificated employment or certificated employment from a local or state law enforcement agency before or not later than three (3) months after the applicant's employment by the school corporation.

(2) Each individual hired for noncertificated employment or certificated employment may be required to provide a written consent for the school corporation to request under IC 5-2-5 limited criminal history information or a national criminal history background check concerning the individual before or not later than three (3) months after the individual's employment by the school corporation. The school corporation may require the individual to provide a set of fingerprints and pay any fees required for a national criminal history background check.

(3) Each individual hired for noncertificated employment may be required at the time the individual is hired to submit a certified copy of the individual's limited criminal history (as defined in IC 5-2-5-1(1)) to the school corporation.

(4) Each individual hired for noncertificated employment may be required at the time the individual is hired to:

(A) submit a request to the Indiana central repository for limited criminal history information under IC 5-2-5;

(B) obtain a copy of the individual's limited criminal history; and

(C) submit to the school corporation the individual's limited criminal history and a document verifying a disposition (as defined in IC 5-2-5-1(6)) that does not appear on the limited criminal history.

(5) Each applicant for noncertificated employment or certificated employment may be required at the time the individual applies to

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answer questions concerning the individual's limited criminal history. The failure to answer honestly questions asked under this subdivision is grounds for termination of the employee's employment.

(6) Each individual that:

(A) seeks to enter into a contract to provide services to a school corporation; or

(B) is employed by an entity that seeks to enter into a contract with a school corporation;

may be required at the time the contract is formed to comply with the procedures described in ~~subdivision (4)(A) and (4)(B)~~. ~~The school corporation either may require that the individual or the contractor comply with the procedures described in subdivision (4)(C) or (5).~~ **subdivisions (2), (4), and (5). An individual who is employed by an entity that seeks to enter into a contract with a school corporation may be required to provide the consent described in subdivision (2) or the information described in subdivisions (4) and (5) to either the individual's employer or the school corporation.** Failure to comply with subdivisions (2), (4), and (5), as required by the school corporation, is grounds for termination of the contract.

(c) If an individual is required to obtain a limited criminal history under this section, the individual is responsible for all costs associated with obtaining the limited criminal history.

(d) Information obtained under this section must be used in accordance with IC 5-2-5-6."

Page 1, line 11, after "of a" insert "**public**".

Page 1, line 11, delete "corporation" and insert "**(as defined in IC 20-10.1-1-2)**".

Page 1, line 13, after "give" insert "**written**".

Page 1, line 16, delete "The" and insert "**Except as provided in subdivision (3), the**".

Page 2, between lines 1 and 2, begin a new line block indented and insert:

**"(3) The presiding officer of the governing body of the school corporation that employs the licensed employee, if the convicted licensed employee is the superintendent of the school corporation."**

Page 2, line 2, after "corporation" insert ", **presiding officer of the governing body,**".

Page 2, line 5, after "the" insert "**public**".

Page 2, line 5, strike "corporation".



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Page 3, line 1, after "(1)" insert "**or more**".

Page 3, line 34, after "(1)" insert "**or more**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1202 as introduced.)

PORTER, Chair

Committee Vote: yeas 12, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1202 be amended to read as follows:

- Page 5, line 6, after "may" insert "**suspend or**".
- Page 5, line 11, after "each" insert "**suspension or**".
- Page 5, line 12, reset in roman "(b)".

(Reference is to HB 1202 as printed February 1, 2002.)

ROBERTSON

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1202 be amended to read as follows:

Page 3, between lines 10 and 11, begin a new paragraph and insert:  
 "SECTION 2. IC 20-5-2-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2002]: **Sec. 2.5. After June 30, 2002, the governing body of a school corporation may not:**

- (1) enter into a contract for; or**
- (2) allow;**

**the sale of beverages with minimal nutritional value from vending machines in areas of school grounds or buildings to which students in kindergarten through grade 8 have access."**

Page 12, after line 38, begin a new paragraph and insert:

**"SECTION 12. [EFFECTIVE JULY 1, 2002] IC 20-5-2-2.5, as added by this act, does not apply to a contract that was executed before July 1, 2002, and that is in existence on July 1, 2002, that requires a governing body to allow the sale of beverages with minimal nutritional value from vending machines in areas of school grounds or buildings to which students in kindergarten through grade 8 have access. However, the governing body may not renew a contract described in this SECTION and, after the contract expires, must comply with IC 20-5-2-2.5, as added by this act."**

Renumber all SECTIONS consecutively.

(Reference is to HB 1202 as printed February 1, 2002.)

FRIEND



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SENATE MOTION

Mr. President: I move that Senator Clark be added as cosponsor of Engrossed House Bill 1202.

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## COMMITTEE REPORT

Mr. President: The Senate Committee on Judiciary, to which was referred House Bill No. 1202, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 32, after "or" insert "**Class**".

Page 3, delete lines 11 through 19.

Page 8, delete lines 21 through 42.

Delete page 9.

Page 10, delete lines 1 through 26, begin a new paragraph and insert:

"SECTION 9. IC 34-13-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. (a) A judgment rendered with respect to or a settlement made by a governmental entity bars an action by the claimant against an employee whose conduct gave rise to the claim resulting in that judgment or settlement.

(b) The governmental entity shall pay any judgment, compromise, or settlement of a claim or suit against an employee when:

(1) the act or omission causing the loss is within the scope of the employee's employment; and

(2) the:

(A) governor, in the case of a claim or suit against a state employee; or

(B) the governing body of the political subdivision, in the case of a claim or suit against an employee of a political subdivision;

determines that paying the ~~judgment~~, compromise or settlement is in the best interest of the governmental entity.

(c) The governmental entity shall pay all costs and fees incurred by or on behalf of an employee in defense of a claim or suit for a loss occurring because of acts or omissions within the scope of the employee's employment, regardless of whether the employee can or cannot be held personally liable for the loss.

(d) This chapter shall not be construed as:

(1) a waiver of the eleventh amendment to the Constitution of the United States;

(2) consent by the state of Indiana or its employees to be sued in any federal court; or

(3) consent to be sued in any state court beyond the boundaries of Indiana.

SECTION 10. IC 34-13-3-3, AS AMENDED BY P.L.250-2001, SECTION 6, AND AS AMENDED BY P.L.280-2001, SECTION 42,

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IS AMENDED AND CORRECTED TO READ AS FOLLOWS  
[EFFECTIVE JULY 1, 2002]: Sec. 3. A governmental entity or an employee acting within the scope of the employee's employment is not liable if a loss results from *the following*:

- (1) The natural condition of unimproved property.
- (2) The condition of a reservoir, dam, canal, conduit, drain, or similar structure when used by a person for a purpose that is not foreseeable.
- (3) The temporary condition of a public thoroughfare *or extreme sport area* that results from weather.
- (4) The condition of an unpaved road, trail, or footpath, the purpose of which is to provide access to a recreation or scenic area.
- (5) *The design, construction, control, operation, or normal condition of an extreme sport area, if all entrances to the extreme sport area are marked with:*
  - (A) *a set of rules governing the use of the extreme sport area;*
  - (B) *a warning concerning the hazards and dangers associated with the use of the extreme sport area; and*
  - (C) *a statement that the extreme sport area may be used only by persons operating extreme sport equipment.*

*This subdivision shall not be construed to relieve a governmental entity from liability for the continuing duty to maintain extreme sports areas in a reasonably safe condition.*

- (6) The initiation of a judicial or an administrative proceeding.
- ~~(6)~~ (7) The performance of a discretionary function; however, the provision of medical or optical care as provided in IC 34-6-2-38 shall be considered as a ministerial act.
- ~~(7)~~ (8) The adoption and enforcement of or failure to adopt or enforce a law (including rules and regulations), unless the act of enforcement constitutes false arrest or false imprisonment.
- ~~(8)~~ (9) An act or omission performed in good faith and without malice under the apparent authority of a statute which is invalid if the employee would not have been liable had the statute been valid.
- ~~(9)~~ (10) The act or omission of anyone other than the governmental entity or the governmental entity's employee.
- ~~(10)~~ (11) The issuance, denial, suspension, or revocation of, or failure or refusal to issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar authorization, where the authority is discretionary under the law.
- ~~(11)~~ (12) Failure to make an inspection, or making an inadequate

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or negligent inspection, of any property, other than the property of a governmental entity, to determine whether the property complied with or violates any law or contains a hazard to health or safety.

~~(12)~~ (13) Entry upon any property where the entry is expressly or impliedly authorized by law.

~~(13)~~ (14) Misrepresentation if unintentional.

~~(14)~~ (15) Theft by another person of money in the employee's official custody, unless the loss was sustained because of the employee's own negligent or wrongful act or omission.

~~(15)~~ (16) Injury to the property of a person under the jurisdiction and control of the department of correction if the person has not exhausted the administrative remedies and procedures provided by section 7 of this chapter.

~~(16)~~ (17) Injury to the person or property of a person under supervision of a governmental entity and who is:

(A) on probation; or

(B) assigned to an alcohol and drug services program under IC 12-23, a minimum security release program under IC 11-10-8, **a pretrial conditional release program under IC 35-33-8**, or a community corrections program under IC 11-12.

~~(17)~~ (18) Design of a highway (as defined in IC 9-13-2-73) if the claimed loss occurs at least twenty (20) years after the public highway was designed or substantially redesigned; except that this subdivision shall not be construed to relieve a responsible governmental entity from the continuing duty to provide and maintain public highways in a reasonably safe condition.

~~(18)~~ (19) Development, adoption, implementation, operation, maintenance, or use of an enhanced emergency communication system.

~~(19)~~ (20) Injury to a student or a student's property by an employee of a school corporation if the employee is acting reasonably under a discipline policy adopted under IC 20-8.1-5.1-7(b). ~~or~~

~~(20)~~ (21) An error resulting from or caused by a failure to recognize the year 1999, 2000, or a subsequent year, including an incorrect date or incorrect mechanical or electronic interpretation of a date, that is produced, calculated, or generated by:

(A) a computer;

(B) an information system; or

(C) equipment using microchips;

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that is owned or operated by a governmental entity. However, this subdivision does not apply to acts or omissions amounting to gross negligence, willful or wanton misconduct, or intentional misconduct. For purposes of this subdivision, evidence of gross negligence may be established by a party by showing failure of a governmental entity to undertake an effort to review, analyze, remediate, and test its electronic information systems or by showing failure of a governmental entity to abate, upon notice, an electronic information system error that caused damage or loss. However, *this* subdivision ~~(20)~~ expires ~~on~~ June 30, 2003. ~~or~~ ~~(21)~~ **(22)** *An act or omission performed in good faith under the apparent authority of a court order described in IC 35-46-1-15.1 that is invalid, including an arrest or imprisonment related to the enforcement of the court order, if the governmental entity or employee would not have been liable had the court order been valid."*

Page 11, line 8, after "employment" strike "must be exclusive to the complaint and".

Page 11, line 27, after "when" insert ",".

Page 11, line 28, reset in roman "(1)".

Page 11, line 30, delete "." and insert ",".

Page 11, line 30, reset in roman "and".

Page 11, reset in roman lines 31 through 35.

Page 11, line 36, reset in roman "determines that paying the".

Page 11, line 36, reset in roman "compromise".

Page 11, line 36, after "compromise" delete ",".

Page 11, line 36, reset in roman "or settlement".

Page 11, reset in roman line 37.

Page 12, between lines 7 and 8, begin a new paragraph and insert:

"SECTION 10. IC 34-13-4-1, AS AMENDED BY P.L.192-2001, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. If a present or former public employee, including a member of a board, a committee, a commission, an authority, or another instrumentality of a governmental entity, is or could be subject to personal civil liability for a loss occurring because of a noncriminal act or omission within the scope of the public employee's employment which violates the civil rights laws of the United States, the governmental entity shall, subject to IC 34-13-3-4, IC 34-13-3-14, IC 34-13-3-15, and IC 34-13-3-16, pay any judgment, compromise, or settlement of the claim or suit when:

(1) the governor, in the case of a claim or suit against a state employee; or



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(2) the governing body of the political subdivision, in the case of a claim or suit against an employee of a political subdivision; determines that paying the ~~judgment~~, compromise or settlement is in the best interest of the governmental entity. The governmental entity shall also pay all costs and fees incurred by or on behalf of a public employee in defense of the claim or suit."

Page 13, delete lines 7 through 16.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1202 as reprinted February 5, 2002.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 0.

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